# **Subject Matter Index**

# Α

# Access to Court Proceedings 1-5

See also Courtroom

# Access to Court Records 3-5

# **Accident Reports**

See Evidence, police report

**Accomplice 384** 

**Additur 242–243** 

# Adjournment

civil case 162–164 criminal case 331–333

## Admissions 185–186

# **Affidavits 155**

contempt 16 default, setting aside 172 search warrant 357–358 summary disposition 178–180

# Aiding and Abetting 473-474

Alibi Defense 372-374

**Allocution 450** 

# **Alternative Dispute Resolution 204**

# Amendment of Pleadings 151-154

by consent 151 by right 151 conform to evidence 152–153 futile 152 relation back 153

# Answer 140

# **Appeals**

administrative 483–486 Circuit Court 493–496 District Court 481–483 driver's license restoration 490–493 MESC 486–487 parole 488–490

# **Appearance 139**

#### Arbitration 250-252

# **Arguments of Counsel**

See Attorney, conduct

# Arraignment

personal protection order 19 probation violation 467

#### Arrest 270-271

confession 299–304 delay 270–271 search and seizure 340

## Attempt 474-476

# **Attorney**

conduct 12–13, 421–446
duty to the court 12
fees
 civil 244–246
 sanction 246
right to counsel 61, 307
substitution 162
waiver of attorney 281–285
 standby counsel 285
withdrawal 162
work product privilege 191

# **Audiotape Evidence**

See Evidence, audiotapes

#### **Authentication 120**

#### **Automobiles**

search 336, 349–352

# В

#### Bail

See Bond

## **Bankruptcy Proceedings**

stay of state court proceedings 137

## **Batson Challenge**

See Jury Trial, selection of jury

## **Battered Woman Syndrome**

See Evidence, sydrome evidence, battered woman

# Bench Trial 208-210, 411-413

jury waiver required 409-411

#### **Best Evidence Rule**

See Evidence, best evidence rule

## **Beyond a Reasonable Doubt**

See Evidence, burden of proof

## Bias of Judge

See Judge, bias

#### Bond 272-277

conditions 273–275 denial of pretrial release 275 material witness 384

#### **Burden of Proof**

See Evidence, burden of proof

#### **Business Records**

See Evidence, hearsay, exceptions, business records

# C

# Case Evaluation 199-204

sanctions 201–204

#### **Chain of Custody**

See Evidence, chain of custody

# **Change of Venue**

See Venue, change

# **Character Evidence**

See Evidence, character evidence

#### Charts

See Evidence, charts and diagrams

#### Child Witness 65–67

See also Witness, child, or Evidence, child witness

#### **Civil Actions**

adjournments 162-164 attorney fees 244-246 substitution or withdrawal 162 contracts 253–256 costs 243-244 declaratory judgments 257 directed verdict 226-228 discovery 188-191 dismissal 247-248 involuntary 164–167, 228 equity 258-259 findings of fact and conclusions of law 238-239, 295-296 injunctive relief 259–262 judgment N.O.V. and new trial 239-241 jurisdiction and venue 129 mandamus 263-264 mistrial 235-236, 247 motions 154-156 new trial 239-241 offer of judgment 197–198 pretrial 194-197 reconsideration 157 sanctions 246-249 security for costs 246 self representation 281–283 separate or joint trials 161–162 service of process 146–147

#### **Civil Contempt**

See Contempt Proceedings

witness disclosure 192-193

summary disposition 155, 174–181

superintending control 264–265

Class Action 252–253

settlement 205-207

summons 145-146

Clean Hands 258

# **Clear and Convincing Evidence**

See Evidence, burden of proof

# **Closing Courtroom**

See Courtroom, closing to public

# **Collateral Estoppel 143**

# Competency Determination 64–65, 311–315

See also Evidence, competency of witness

# Complaint 139

#### **Conditional Release Order**

See Bond

#### Confession 298-306

See also Evidence, confession

#### **Confidential Informer**

search warrant 357 See Evidence, in camera review

# **Confidential or Privileged Matters**

See Discovery and Evidence, privileges

#### Confrontation 418–419

See also Evidence, examination and crossexamination

# Conspiracy 476–478

statement of co-defendant/co-conspirator 113–116, 477

# **Contempt Proceedings 15–18**

civil and criminal contempt distinguished
16
rules of evidence 16
show cause 15, 16
standard of proof 16

#### **Contracts 253–256**

construction 253–254 failure to read 256 parol evidence rule 254-255 release 256 statute of frauds 255

#### Costs

See Civil Actions, costs

## **Counsel**

See Attorney

Counterclaim 140–141	mistrial 441–444
Courtroom	motions 293–296
closing to public 1–3	new trial 444–448
media in courtroom 3	plea 399–401
media in courtionii 3	agreement 395–399
Criminal Actions	collateral attack 399–402
adjournments 331–333	no contest 387–389
aiding and abetting 473–474	withdrawal of guilty plea 391–395
alibi 372–374	police report 58
arrest 270–271	post appeal relief 470–472
delay 270–271	pretrial 293–360
attempt 474–476	probation violation 467–470
attorney	arraignment 467
effective assistance of counsel 393–394	hearing 468
right to counsel 471	plea 469
substitution or withdrawal 280–281	sentencing 469
waiver of attorney 281–285	prosecutorial misconduct 421–425
bond, pretrial release 272–277	quash, motion challenging bind over deci-
competency determination 311–315	sion 288–290
confession 298–306	search and seizure 333–359
conspiracy 476–478	automobile 336, 349–352
statement of co-defendant/co-conspirator	consent 341–343
113–116, 477	dwelling 336, 352–355
controlled substances 478–480	knock and announce 353
criminal sexual conduct, rape shield law	knock and talk 353
48–49, 364, 367–372	plain smell exception 356
defendant	stop by police 341, 355–357
conduct and appearance 417–419	warrants 357–359
requiring to display body or perform act	sentencing 448–470
419–420	allocution 450
directed verdict 429–431	habitual offender 452, 456–457
discovery 361–366, 371	Holmes Youthful Trainee Act 458–460
dismiss, motion to 288–296, 430–435	jail credit 463–467
double jeopardy 20, 315–317	juvenile 460–462
entrapment 317–321	separate or joint trial 323–326
by estoppel 320–321	sexually delinquent person 462–463
expert witness, court appointed 91, 321–	speedy trial 326–331
322	statement of co-defendant/co-conspirator
expungement 472–473	113–116
grand jury 285–288, 364	statement of defendant, motion to suppress
handcuffs 417	298–306
identification 306–311	suppress evidence, motion to 296–297
information 291	syndrome evidence 93–96
insanity and mental illness 375–380	tracking dog evidence 103–104
jury waiver 409–411	witnesses, endorsement and production
lineup 307–310	294–384

# **Criminal Contempt**

See Contempt Proceedings

# Criminal Sexual Conduct, Rape Shield Law

See Evidence, character evidence, or Rape Shield Law

## Cross-claim 140-141

#### **Cross-examination**

See Confrontation
See Evidence, examination and cross-examination

# D

#### **Daubert Test 87**

See also Evidence, expert testimony

## **Davis-Frye Test 90**

See also Evidence, expert testimony

# **Declaratory Judgments 257**

# Default and Default Judgments 167-174

affidavit 169, 172 good cause 170–171 meritorious defense 171 setting aside 169–171

#### **Defendant**

conduct and appearance 417–419 flight 420 misconduct 420–421 self-incrimination 82–85

#### **Delayed Sentence**

See Sentencing, delayed sentence

#### **Demonstrative Evidence**

See Evidence, demonstrative evidence

#### **Detainers 331**

## **Diagrams**

See Evidence, charts and diagrams

## Dicta

See Opinions, precedent

# **Diminished Capacity**

See Criminal Actions, insanity and mental illness

#### **Direct Examination**

See Evidence, examination and cross-examination

#### **Directed Verdict**

after opening statement 227–228 civil 226–228 criminal 429–431 dismissal, involuntary 228

# **Discovery 371**

admissions, request for 185–186 civil 188–191 criminal 361–366, 371 documents, request for 186–191 in camera review 182, 188–191 independent medical examination 191–192 medical information 188 motion to compel 182 privilege 187 records, request for 187 sanctions 182–184 scope 182 standard of review 184

# Discovery of Privileged Records 38, 188-191

See also Evidence, in camera review, and Evidence, privileges

## Discretion 20, 494

Dismiss, Motion to 166, 209, 288–296

# Dismissal, Involuntary 164–167, 249, 430–435 after opening statement 434

#### Disqualification of Judge 9–12, 208, 411

#### **District Court**

appeals 481–483 preliminary examination 288-290

#### **Documents**

See Evidence, documents

## Dogs

drug dog 104 See also Evidence, tracking dog evidence

## **Double Jeopardy**

See Criminal Actions, double jeopardy

Driver's License Appeals 490–493	experiments 122
Drugs	expert testimony 85, 100-102, 321-322,
drug dogs 104	376
drug profile evidence 479	admissibility 86
See also Criminal Actions, controlled sub-	disclosure of expert 88
	medical malpractice 89, 92-93
stances	motion to strike 91
Dwelling	police witness 100–102
search 336, 352–355	qualifications 89, 93
=	fingerprints 102–103
E	flight by defendant 420
Entrapment 317–321	foundation 28–29
by estoppel 320–321	habit 54–76
by estopper 320–321	hearsay 104–113
Equity	exceptions 79, 107–116
See Civil Actions, equity	business records 110–111
Evidence	catch-all 111–112
accomplice testimony 384	excited utterance 108
admissibility 22, 25–28	present sense impression 107
audiotapes 124–125	recorded recollection 109-110
best evidence rule 126	statement of then existing mental, emo-
blood stain 101	tional or physical condition
burden of proof 30–31	108–109
chain of custody 119–120	statements made for purposes of medi-
character evidence 44–50	cal treatment or diagnosis 109
charts and diagrams 121	tender years 112
child witness 65–67	unavailable witness 112–113
competency of witness 64–65, 65	non-hearsay 106–107
confession 298–306	waiver 113
cross-examination 67–68	identification 306–311
cumulative evidence 36–37	lineup 307, 309–310
defendant misconduct 420–421	object 311
defendant, conduct and appearance 417–	on scene 310
419	photo lineup 309–310
defendant, requiring to display body or per-	voice 310–311
form act 419–420	impeach, motion to 70–74
defendant's character 46–47	impeachment of witness 69–76, 374
demonstrative evidence 122–123	bias 70
depositions 80–82	character 50, 70
documents 125–126	prior convictions 70–74
documents, request for 186–191	prior inconsistent statements 74–76
drug profile 101	in camera review 188–191, 363–364
examination and cross-examination 67–68,	independent medical examination 191–192
374	insurance 57–58
exhibits 119	interrogatories 80–82
CAMILOTO 117	judicial notice 29–30

lay opinions 85–86 leading questions 68 limits on evidence and testimony 34–37	Examination of Witnesses  See Evidence, examination and cross-examination
lineup 306–310 materiality 42 missing evidence 40–41	Exhibits See Evidence, exhibits
motion in limine 24–25	Experiments 122
motion to suppress 296–306 negative evidence 116–118 non-responsive answer 68 objection 23 offer of proof 23 opinion evidence 45–46, 49–50 order of proof 33–34 other acts 50–54 other crimes 47, 51 outline 22 parol evidence rule and statute of frauds	Expert Testimony admissibility standard 86 Davis-Frye test 90 disclosure of expert 88 jury instruction 92 medical malpractice 92–93 police witness 100–102, 446 qualification of expert 89 standard of review 93 See also Evidence, expert testimony
254–255	Expert Witness Court Appointed 91
past recorded recollection 79–80 photographs 123–124	<b>Expungement of Criminal Conviction 472–473</b>
police report 58	F
polygraph 58–61 presumptions 31–33, 417–418	Fees 144-145, 278-279
prior accidents 55 prior convictions 71–73 prior inconsistent statements 74–76 privileges 37–40, 191, 379–380, 427	Finding of Fact bench trial 209–210, 412–413 civil 238–239
rebuttal evidence 33 refreshing recollection 76–80	Fingerprints See Evidence, fingerprints
relevancy 41–44 self-incrimination 82–85 settlement negotiations 56–57 similar acts evidence 50–54	Former Testimony of Unavailable Witness See Evidence, hearsay exceptions, and Hearsay Exceptions
statement of co-defendant/co-conspirator	Forum Non Conveniens 160
113–116 subsequent remedial measures 56 syndrome evidence 93–96	Foundation See Evidence, foundation
battered woman 94 sexually abused child 94, 94–96 tracking dog evidence 103–104	Frauds, Statute of 255 See also Civil Actions, contracts, and Contracts
drug sniffing dog 104 videotapes 124 witness disclosure 61–63 writings and documents 125–126	Frivolous Claim or Defense 248–249 See also Civil Actions, sanctions

# G

# **Gag Orders 3**

# **Ginther Hearing 427**

See also Criminal Actions, attorney, effective assistance of counsel

# Grand Jury 285-288, 364

# **Guilty But Mentally Ill**

See Criminal Actions, insanity and mental illness

# Н

#### Habit

See Evidence, habit

#### **Habitual Offender Sentence**

See Sentencing, habitual offender

# Hearsay

See Evidence, hearsay, and Hearsay Exceptions

# **Hearsay Exceptions 79, 107–113**

business records 110–111
catch-all 111–112
excited utterance 108
present sense impression 107
recorded recollection 109–110
statement of then existing mental, emotional or physical condition 108–109
statements made for purposes of medical treatment or diagnosis 109
tender years 112
unavailable witness 112–113

# **Hospital Records 188**

# ı

#### **Identification 306–311**

lineup 307, 309–310 voice 310–311 See also Evidence, identification

# Impeachment 69–76

motion to impeach 69–74

# In Camera Hearing

discovery 188–191 See also Evidence, in camera review

#### **In Camera Review 77**

# **Indigent Defendant**

appointment of counsel 279

# **Indigent Persons**

waiver of fees 5-6, 144, 278-279

#### Inference 43

#### **Information**

amendment 291 joinder of counts 291–293 See also Criminal Actions, information

# **Injunctive Relief**

See Civil Actions, injunctive relief

# **Insanity and Mental Illness**

See Criminal Actions, insanity and mental illness

#### Insurance

See Evidence, insurance

#### **Interpleader 262**

**Interrogatories 80–82** 

Intervention 148–149

# J

## Joinder of Parties and Claims 141-142

#### Judge

bias 11 disqualification 9–12

# Judgment N.O.V. and New Trial

See Civil Actions, judgment N.O.V.

#### **Judgment, Enforcement of 249**

#### **Judicial Notice**

See Evidence, judicial notice

#### Jurisdiction 129–134, 135–137

circuit court 135–137 court of appeals 136–137

court of claims 136 district court 135	Limits on Evidence See Evidence, limits on evidence and testi-
federal court 137	mony
personal 132–134	Lineup
primary jurisdiction doctrine 138 probate court 136	See Evidence, identification
subject-matter jurisdiction 130–132	M
Jury	Mandamus 263–264
anonymous 216 misconduct 445	Mediation 199–204
sequestration 215	sanctions 201–204
Jury Nullification 218	See also Alternative Dispute Resolution, and Case Evaluation
Jury Selection	Minors
voir dire 403–407	settlement 207
Jury Trial 210–238	See also Evidence, child witness
civil 210	Mistrial
composition of panel 211, 403	civil 235–236
criminal 403 hung jury 233–235	criminal 441–444
instructions	More Definite Statement, Motion for 150
civil 228–229	Motion for Involuntary Dismissal 164-167, 228,
criminal 431–435 lesser included offenses 432–434	430–435
questions by jury 231–233	Motion for Protective Order 184
questions or comments by judge 225–226,	<b>Motion for Setting Aside Case Evaluation 200</b>
416–417 selection of jury 211–217, 403–408	See also Case Evaluation
Batson challenge 214, 216	Motion in Limine 24–25
challenge for cause 213, 216, 405, 409 preemptory challenges 214, 215, 406 verdict 236–238 view 226 voir dire 213, 216, 217–218, 404, 409 waiver 409–411	Motion to Compel 182
	Motion to Impeach 70–74
	<b>Motion to Strike Expert Testimony 91</b>
	<b>Motion to Suppress Evidence 296–297</b>
Juvenile Records 402	<b>Motion to Suppress Statement 298–306</b>
L	Motions
I l 250	civil 154–156
Laches 259	criminal 293–296
Leading Question 68	O
Lie Detector See Evidence, polygraph	Oaths 6–9, 221–223
See Evidence, porygraph	bailiff 7, 222

child witness 8, 223 grand jury 8 interpreter 8, 222 juror 6, 7, 221, 222 new attorney 8 public officers 8 witness 7, 222

# **Objections 23**

See also Evidence, offer of proof

# Offer of Judgment 197-198

#### Offer of Proof

See Evidence, offer of proof

# Opinion Evidence 45, 49–50

expert 89–91 lay 85–86 medical malpractice 96–99 police 100–102

# **Opinions (Decisions)**

abuse of discretion 494
basis for parties' positions 496
law of the case 499–500
precedent 497–499
remand 503
res judicata 142–143
review of findings 493–496
standard of review 493–496
statutory construction and interpretation
500–503
writing opinions 504–506

#### **Order of Proof**

See Evidence, order of proof

#### **Orders**

reconsideration 157 uncontested orders 155

#### **Other Act Evidence**

See Evidence, similar acts evidence

## **Other Crimes Evidence**

See Evidence, similar acts evidence

# P

#### Parol Evidence 254-255

See also Civil Actions, contracts, and Contracts

#### **Parole**

appeals 488-490

#### Personal Jurisdiction 132–134

#### **Personal Protection Orders 18–20**

contempt proceedings 19 issuance 19

# **Personal Recognizance 273**

Personnel Files 189-190

## Photographic Lineup 309-310

See also Evidence, identification

# **Photographs**

See Evidence, photographs

# Physician's Report 192

#### Plea 399-401

agreement 395–399 Cobbs agreement 392 collateral attack 399–402 no contest 387–389 taking under advisement 452 vacating 394 withdrawal of guilty plea 391–395

# **Pleadings 138–141**

amendment 151-154

#### **Police Officers**

opinion evidence 100–102

#### **Police Report**

See Evidence, police report

#### **Polygraph**

See Evidence, polygraph

# Post Appeal Relief 470–472

#### Precedent

See Opinions, precedent

# **Preliminary Injunction**

See Civil Actions, injunctive relief

# **Preponderance of Evidence**

See Evidence, burden of proof

# **Present Sense Impression 107**

# **Presentence Investigation Report**

See Sentencing

# **Presumptions**

See Evidence, presumptions

#### **Pretrial Conference**

civil 194–197 criminal actions 293–360

# Pretrial Motions 208, 411

#### **Pretrial Release**

See Bond

## **Privileges**

See Evidence, privileges

#### **Pro Per Parties**

See Unrepresented Parties

# **Pro Per Warnings and Cautions 154**

#### **Probation Violation 467–470**

arraignment 467 hearing 468 plea 469 sentencing 469

#### **Prosecuting Attorney**

misconduct 421-425

#### **Protective Order, Motion for 184**

# Q

#### Quash

motion challenging bind over decision 288–290 motion to quash subpoena 14, 225 See also Discovery, and Subpoenas

# R

Rape Shield Law 48, 364, 367–372

#### Rebuttal 221

#### **Rebuttal Evidence 33**

**Reconsideration 157** 

## **Refreshing Recollection**

See Evidence, refreshing recollection

## Rehearing

See Orders, reconsideration, or Reconsideration

## Relevancy

See Evidence, relevancy

#### Remand

motion to quash 290 See Opinions, remand

#### Remittitur 242–243

Removal 137

# **Reputation Evidence**

See Evidence, character evidence

#### Res Judicata 142-143

**Restitution 453** 

# **Rights of Accused**

confrontation 418–419 remain silent 304–305

# S

#### **Sanctions**

See Civil Actions, sanctions

#### **Scientific Evidence**

See Evidence, expert testimony

#### Sealed Records 4

#### Search and Seizure 333-359

automobile 336, 349–352 consent 341–343 dwelling 336, 352–355 exigent circumstances 339–340 inevitable discovery 348 knock and announce 353 knock and talk 353 plain feel exception 356 plain smell exception 356 plain view 343 standing 335–336, 349, 352–353 stop by police 341, 355–357 warrants 357–359

#### Search Warrants 357–359

descriptions 359
Franks Hearing 357
issuance 357
See also Search and Seizure

# Self Representation 281–283

standby counsel 285 See also Unrepresented Parties

# Self-incrimination, Right Against

See Evidence, self-incrimination

# Sentencing 448-470

agreement 395–399
consecutive 451
delayed sentence 452
guidelines 449–456, 457
habitual offender 452, 456–457
Holmes Youthful Trainee Act 458–460
jail credit 463–467
juvenile 460–462
presentence investigation report 448–449
probation 452
recommendations 397–398
resentencing 454
restitution 453

# **Separate or Joint Trial**

civil 161–162 criminal 323–326

#### **Service of Process**

See Civil Actions, service of process

#### **Settlement Conference 196–197**

See also Civil Actions, settlement

#### **Settlements**

incapacitated individuals 207 minors 207 negotiations, evidence of 56–57 record 205–206 release 207

setting aside 207 wrongful death 206

# **Sexually Abused Child Syndrome**

See Evidence, syndrome evidence, sexually abused child

#### **Similar Acts Evidence**

See Evidence, similar acts evidence

## **Speedy Trial**

See Criminal Actions, speedy trial

# **Statement of Co-Conspirator**

See Evidence, statement of co-defendant/ co-conspirator

#### **Statute of Frauds 255**

See also Civil Actions, contracts, and Contracts

## Stipulations 223–224

Strike, Motion to 150-151

**Subject-Matter Jurisdiction 130–132** 

Subpoenas 13–14, 224–225

# **Subsequent Remedial Measures**

See Evidence, subsequent remedial measures

# **Summary Disposition 174–181**

grounds 175–179 notice 155 proofs 179–180

#### **Summons**

See Civil Actions, summons

## **Superintending Control**

See Civil Actions, superintending control

#### **Syndrome Evidence**

See Evidence, syndrome evidence

# T

# **Temporary Restraining Orders**

See Civil Actions, injunctive relief

**Terry Stop 341, 355–357** 

#### **Trade Secrets 190**

#### Trial

See Bench Trial, and Jury Trial

# U

# **Unrepresented Parties 154**

# V

#### Venue 134

change 158–161, 322-323

#### **Verdicts 236–238**

not guilty by reason of insanity 376
See also Criminal Actions, insanity and mental illness
See also Directed Verdict, and Jury Trial, verdict

#### Victim

character evidence 48–49 exclusion 63 rape shield law 48 special arrangements to protect victim 372 See also Sentencing, restitution

# **Videotape Evidence**

See Evidence, videotapes

Voir Dire 404–407

# W

## Waiver

attorney 283–284 jury 208, 409–411

# Walker Hearing 299-304

See also Criminal Actions, statement of defendant, motion to suppress

#### Warrants

arrest 269 search 357–359

#### Witness

child 65–67 competency 65 disclosure 61–63, 192–193

endorsement and production 294-384 examination 67-68 exclusion 63–64 expert See Evidence, expert testimony failure to produce 424 impeachment 69-76 locating and producing 381–382 material witness 384 misconduct 446 motion to impeach 70–74 out of state witnesses 365 preclude from testifying 35 res gestae witness 381 sequester 63 unavailable witness 383 witness list civil 192-193 criminal 381

# **Writings and Documents**

See Evidence, writings and documents

